

SCARINCI HOLLENBECK

ATTORNEYS AT LAW

1100 Valley Brook Avenue

P.O. BOX 790

LYNDHURST, NEW JERSEY 07071-0790

Telephone: (201) 896-4100

Attorneys for Defendant Michael Denham

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

MICHAEL ROGERS,

Plaintiff,

v.

MICHAEL DENHAM,

Defendant.

**NOTICE OF REMOVAL**

*Document Electronically Filed*

TO: CHIEF JUDGE GARRETT E. BROWN, JR. AND JUDGES OF  
THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

ON NOTICE TO:

Pablo N. Blanco, Esq.

Timothy R. Smith & Associates, LLC

76 South Orange Avenue, Suite 201

South Orange, NJ 07079

*Attorneys for Plaintiff*

**PLEASE TAKE NOTICE** that Defendant Michael Denham (hereinafter "Defendant") notices the removal of this action, pursuant to 28 U.S.C. §§ 1331 and 1441, *et seq.*, from the Superior Court of New Jersey, Monmouth County, Law Division to the United States District Court for the District of New Jersey, and as grounds therefore shows as follows:

**TIMELINESS OF REMOVAL**

1. On March 25, 2009, Plaintiff, Michael Rogers, (hereinafter "Plaintiff") served the Defendant with a Summons and Complaint filed in the Superior Court of New Jersey, Monmouth County ("State Action"). A true copy of these documents is attached hereto as **Exhibit A**.

2. The Supreme Court of the United States has affirmatively established that the thirty (30) day period to remove an action to federal court begins to run on the date of proper service of the Summons and Complaint. Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 354 (1999).

3. Accordingly, pursuant to 28 U.S.C. § 1446(b), this Notice of Removal has been timely filed.

**BASIS FOR REMOVAL**

4. This action is a civil action arising from the same incident at issue in Rogers v. Denham, et al., No. 08-2080 (MLC/LHG) ("Federal Action"), an action pending in this Court over which this Court has original jurisdiction under 28 U.S.C. §1331 by virtue of the claims asserted therein under the Civil Rights Act, 42 U.S.C.A. §§1983 and 1988.

5. Significantly, both, this action and the Federal Action allege malicious prosecution arising from the same set of facts, namely, Plaintiff's arrest on or about July 14, 2005.

6. This action should be removed to this Court pursuant to 28 U.S.C. §1367 because it is so related to the claims in the Federal Action that both actions form part of the same case or controversy. Accordingly, this Court has subject matter jurisdiction by virtue of 28 U.S.C. § 1367.

7. Moreover, the principles of efficiency and comity underpinning the entire controversy doctrine, which doctrine is recognized by this Court (Ctr. for Prof'l Advancement v. Mazzie, 347 F. Supp.2d 150, 154 (D.N.J. 2004) (under the Full Faith and Credit Act, the New Jersey federal courts

apply the entire controversy doctrine, as that doctrine is recognized by the New Jersey state courts), militate removal of this action to this Court so that it may be resolved in conjunction with the parallel Federal Action. Gross v. Cohen Dufour & Assocs., 273 N.J. Super. 617, 631 (Law Div. 1993) (dismissing state court action pursuant to the entire controversy doctrine where it arose from the same operative facts as presented in a pending federal action).

8. Defendant has not previously sought similar relief with respect to this State Action.

WHEREFORE, the removing Defendant respectfully requests this Honorable Court take jurisdiction of this action and issue all necessary orders and process to remove said action to the United States District Court for the District of New Jersey.

Respectfully submitted,

SCARINCI HOLLENBECK  
Attorneys for Defendant Michael Denham

By: s/Christine M. Vanek, Esq.  
CHRISTINE M. VANEK, ESQ.

Dated: April 23, 2009

**LOCAL CIVIL RULE 11.2 CERTIFICATION**

I, Christine M. Vanek, Esq., counsel for the Defendant certify that the matter in controversy is the subject of an action pending in the United States District Court for the District of New Jersey captioned Rogers v. Denham, et al., No. 08-2080 (MLC/LHG). Aside from that action, the matter in controversy is not the subject of any other action pending in any court nor any pending arbitration or administrative proceeding.

SCARINCI HOLLENBECK  
Attorneys for Defendant Michael Denham

By: *s/Christine M. Vanek, Esq.*  
CHRISTINE M. VANEK, ESQ.

Dated: April 23, 2009

**CERTIFICATION OF SERVICE**

I hereby certify that a copy of this Notice of Removal has been served on April 23, 2009, via New Jersey Lawyer's Service:

Pablo N. Blanco, Esq.  
Timothy R. Smith & Associates, LLC  
76 South Orange Avenue, Suite 201  
South Orange, NJ 07079  
Attorneys for Plaintiff

Clerk, Superior Court of New Jersey  
Courthouse  
71 Monument Park  
P.O. Box 1266  
Freehold, New Jersey 07728-1266

Theodore J. Fetter, Clerk  
Superior Court of New Jersey  
Hughes Justice Complex  
CN -971  
Trenton, New Jersey 08625

SCARINCI HOLLENBECK  
Attorneys for Defendant Michael Denham

By: *s/Christine M. Vanek, Esq.*  
CHRISTINE M. VANEK, ESQ.

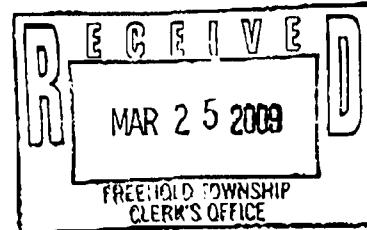
Dated: April 23, 2009

## **EXHIBIT A**

MAR. 26. 2009 8:10AM

NO. 569 P. 2

Timothy R. Smith & Associates, LLC  
 76 South Orange Avenue, Suite 201  
 South Orange, NJ 07079  
 (973) 763-5400  
 Attorneys for Plaintiff



MICHAEL ROGERS,

SUPERIOR COURT OF NEW JERSEY  
 MONMOUTH COUNTY - LAW DIVISION

Plaintiff(s),

Docket No. MON-L-1053-09

vs.

Civil Action

MICHAEL DENHAM  
 TOWNSHIP OF FREEHOLD

SUMMONS

Defendant(s).

The State of New Jersey to the Above Named Defendant(s):

Michael Denham

YOU ARE HEREBY SUMMONED in a Civil Action in the Superior Court of New Jersey, instituted by the above plaintiff(s) and required to serve upon the attorney(s) for the plaintiff(s), whose name and office address appears above, an answer to the annexed complaint within 35 days after the service of the summons and complaint upon you, exclusive of the day of service. If you fail to answer, judgment by default may be rendered against you for the relief demanded in the complaint. You shall promptly file your answer and proof of service thereof with the Clerk of the Superior Court at the **Monmouth County Courthouse, 71 Monument Park, Freehold, New Jersey**, in accordance with the rules of civil practice and procedure.

If you cannot afford to pay an attorney, call a Legal Services Office. An individual not eligible for free legal assistance may obtain a referral to an attorney by calling a county lawyer referral service. These numbers may be listed in the yellow pages of your phone book or may be obtained by calling the New Jersey State Bar Association Lawyer Referral Service toll-free 800-792-8315 (within New Jersey) or 609-394-1101 (from out of state).

Dated: March 18, 2009

/s/ Donald F. Phelan  
 Donald F. Phelan, Superior Court Clerk

**PLEASE FORWARD THIS SUMMONS & COMPLAINT TO YOUR INSURANCE COMPANY**

Defendant(s): Michael Denham

c/o Freehold Police Dept.  
 One Municipal Plaza  
 Freehold, NJ 07728-3099

MAR. 26, 2009 8:10AM

NO. 569 P. 3

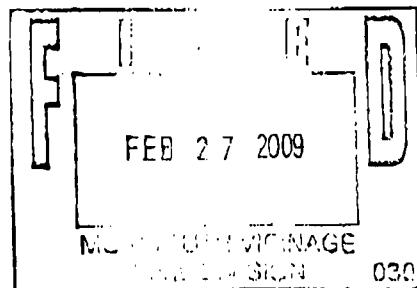
## Appendix XII-B1

<b>CIVIL CASE INFORMATION STATEMENT</b> <b>(CIS)</b>			FOR USE BY CLERK'S OFFICE ONLY
 <p>Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1 Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed or if attorney's signature is not affixed.</p>			PAYMENT TYPE: CK CG CA CHG/CK NO. AMOUNT: OVERPAYMENT: BATCH NUMBER:
ATTORNEY/PRO SE NAME Pablo N. Blanco	TELEPHONE NUMBER (973) 763-5400	COUNTY OF VENUE Monmouth	DOCKET NUMBER (When available)
FIRM NAME (If applicable) Law Office of Timothy R. Smith & Associates, LLC		DOCUMENT TYPE Complaint	
OFFICE ADDRESS 76 South Orange Avenue, Suite 201 South Orange, NJ 07079		JURY DEMAND <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
NAME OF PARTY (e.g., John Doe, Plaintiff) Michael Rogers, plaintiff	CAPTION Michael Rogers v. Michael Denham		
CASE TYPE NUMBER (See reverse side for listing) 699	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED 'YES,' SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN		
<b>THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.</b>			
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, IS THAT RELATIONSHIP <input type="checkbox"/> EMPLOYER-EMPLOYEE <input checked="" type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY?			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:			
<input checked="" type="checkbox"/>	DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, FOR WHAT LANGUAGE:	
ATTORNEY SIGNATURE 			

MAR. 26. 2009 8:11AM

NO. 569 P. 4

Timothy R. Smith & Associates, LLC  
76 South Orange Avenue, Suite 201  
South Orange, NJ 07079  
(973) 763-5400  
Attorneys for Plaintiff



MICHAEL ROGERS,

Plaintiff(s),

vs.

MICHAEL DENHAM

Defendant(s).

SUPERIOR COURT OF NEW JERSEY  
MONMOUTH COUNTY - LAW DIVISION

Docket No. L 1053-09

Civil Action

## COMPLAINT AND JURY DEMAND

The plaintiff, Michael Rogers, complaining against defendant, alleges as follows:

1. On or about July 14, 2005 plaintiff was lawfully on the premises known as 402 West Main Street, Freehold, New Jersey, an Escondido's Restaurant.
  
2. At that time and place the defendant Michael Denham, an off-duty police officer of the Township of Freehold, approached the plaintiff and detained him. Such detention was effected without a reasonable and justifiable suspicion of any criminal activity and such act was beyond the scope of defendant's employment as a police officer. Thereafter, defendant Denham arrested the plaintiff.

3. Subsequently, defendant Denham falsely and maliciously filed criminal complaints against the plaintiff charging him with resisting arrest and aggravated assault on a police officer. Plaintiff was later found not guilty of the charges after a jury trial on February 28, 2007.

4. The filing of a criminal complaint against the plaintiff by the defendant Denham, as aforesaid, and the subsequent prosecution commenced and instituted by the defendant Denham, was without basis, without reasonable or probable cause, and was done maliciously and with the intent to harm the plaintiff, thereby constituting a malicious prosecution under New Jersey common law.

5. As a result of the malicious prosecution by the defendant, the plaintiff was injured, suffered in his business and reputation, and was otherwise damaged.

WHEREFORE, Plaintiff demands judgment against defendant for compensatory and punitive damages together with lawful interest; attorneys and costs of suit; and for such other and further relief as the court deems just and proper.

MAR. 26. 2009 8:11AM

NO. 569 P. 6

### JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues herein.

### DESIGNATION OF TRIAL COUNSEL

Pablo N. Blanco is hereby designated as trial counsel pursuant to Rule 4:25-4.

Timothy R. Smith & Associates, LLC  
Attorneys for Plaintiff

By: 

Pablo N. Blanco, Esq.

Dated: February 26, 2009

### CERTIFICATION PURSUANT TO RULE 4:5-1

It is hereby certified pursuant to Rule 4:5-1 as follows:

1. The matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding and no such other action or arbitration is contemplated to the knowledge of this party; except that an action in the federal District Court has been instituted arising out of the same acts alleged herein bearing Civil Action No. 08-2080.

2. This party knows at this time of no other parties that should be joined in this action.

Timothy R. Smith & Associates, LLC  
Attorneys for Plaintiff

By: 

Pablo N. Blanco, Esq.

Dated: February 26, 2009